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10/735,772	12/16/2003	Stanley J. Gutowski	AND01 006 CONT	4111

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DUANE MORRIS LLP  
Suite 700  
1667 K Street, N.W.  
Washington, DC 20006

EXAMINER

BOAKYE, ALEXANDER O

ART UNIT PAPER NUMBER

2667

DATE MAILED: 03/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/735,772

**Applicant(s)**

GUTOWSKI, STANLEY J.

**Examiner**

ALEXANDER BOAKYE

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 6-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3/16/04.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

### ***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 6-12 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,693,884.

Although the conflicting claims are not identical, they are not patentably distinct from each other because both applications recite identifying all locations in a service area having degraded service, assigning an average service level value to each location; summing the average service level values of each location; dividing the sum of the average service level values by the level of service throughout the service area to obtain a value representing the quality of service for the service area with the only difference between the claims of the instant application and the claim of the patent being that the claim of the patent discloses determining the ratio of the locations receiving degraded service to the total number of locations served by the service area

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while the claim of the instant application does not anticipate such limitation. The claim of the instant application is broader than the claim of the patent. Therefore, it would have been obvious to one of ordinary skill in the art to implement the invention of the instant application using the method of quantifying a quality of service in a cellular system with the motivation being that it provides capability of eliminating interferences.

Claims 13-14 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No.6,693,884. Although the conflicting claims are not identical, they are not patentably distinct from each other because both applications recite identifying all locations in a service area having degraded operations; assigning an average service level value to each location; summing the average service level values of each location; determining the level of service throughout the service area; and determining the ration the locations receiving degraded service to the total number of locations served by the service area to obtain a quality of service for the service area; and dividing the sum of the average service levels values by the level of service throughout the service area to obtain a quality of service for the service area with the only difference between the claims of the instant application and the claim of the patent being that the claim of the patent discloses dividing a service area into a total number of locations served by a service are. The claim of the instant application is broader than the claim of the patent. Therefore, it would have been obvious to one of ordinary skill in the art to implement the invention of the instant application using the method of quantifying a quality of service in a cellular system with the motivation being that it provides capability of eliminating interferences.

Claims 15-16 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 4 of U.S. Patent No.6,693,884. Although the conflicting claims are not identical, they are not patentably distinct from each other because both applications recite identifying all locations in a service area having degraded operations; summing the average service level values of each location; determining the ratio of the locations receiving degraded service to the total number of locations served by service area to obtain a value representing the quality of service; and dividing the sum of the average service level values by the level of service throughout the service area to obtain a value representing the quality of service with the only difference between the claims of the instant application and the claim of the patent being that the claim of the patent discloses determining path loss between each location and each base station while the claim of the instant application does not anticipate such limitation. Therefore, it would have been obvious to one of ordinary skill in the art to implement the invention of the instant application using the method of quantifying a quality of service in a cellular system with the motivation being that it provides capability of eliminating interferences.

Claims 17-18 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 4 of U.S. Patent No.6,693,884. Although the conflicting claims are not identical, they are not patentably distinct from each other because both applications recite assigning an average service level value to locations having degraded service; summing the average service level values of each location; dividing the sum of the average service level values by the level of service

throughout the service area to obtain a first value representing a measure of the quality of service for the service area with the only difference between the claim of the instant application and the claim of the patent being that the claim of the patent discloses determining path loss between each location and each base station while the claim of the instant application does not anticipate such limitation. The claim of the instant application is broader than the claim of the patent. Therefore, it would have been obvious to one of ordinary skill in the art to implement the invention of the instant application using the method of quantifying a quality of service in a cellular system with the motivation being that it provides capability of eliminating interferences.

Claims 19-22 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 4 of U.S. Patent No.6,693,884. Although the conflicting claims are not identical, they are not patentably distinct from each other because both applications recite determining interference for each location the service area from data defining signals received at the location; determining a received signal level necessary for providing a quality transmission at each location; determining path loss between each location and each base station; determining a level of transmitted signal required from each base station upon the received signal level necessary for providing a quality transmission at the location and path loss between the location and each base station with the only difference between the claims of the instant application and the claim of the patent being that the claim of the patent discloses summing the average service level values of each location having degraded operations while the claim of the instant application lacks such limitation. The claim of the instant

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application is broader than the claim of the patent. Therefore, it would have been obvious to one of ordinary skill in the art to implement the invention of the instant application using the method of quantifying a quality of service in a cellular system with the motivation being that it provides capability of eliminating interferences.

Claims 17-18 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 4 of U.S. Patent No.6,693, 884. Although the conflicting claims are not identical, they are not patentably distinct from each other because both applications recite determining interference for each location

Claim 23 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 4 of U.S. Patent No.6,693,884. Although the conflicting claims are not identical, they are not patentably distinct from each other because both applications recite determining interference for each location the service area from data defining signals received at the location; determining a received signal level necessary for providing a quality transmission at each location; determining path loss between each location and each base station; determining a level of transmitted signal required from each base station upon the received signal level necessary for providing a quality transmission at the location and path loss between the location and each base station with the only difference between the claims of the instant application and the claim of the patent being that the claim of the patent discloses summing the average service level values of each location having degraded operations while the claim of the instant application lacks such limitation. The claim of the instant application is broader than the claim of the patent. Therefore, it would have been

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obvious to one of ordinary skill in the art to implement the invention of the instant application using the method of quantifying a quality of service in a cellular system with the motivation being that it provides capability of eliminating interferences.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 17 and 18 are rejected under 35 U.S.C. 102(e) as being anticipated by Jensen et al. (6,693,884).

Regarding claim 17, Jensen discloses an apparatus for determining a quality of service for wireless communication network having a plurality of locations, the apparatus comprising a processor circuit (Fig. 4) programmed to: assigning an average service level value to a plurality of locations having degraded service (column 11, lines 20-33; see Fig. 4); sum the average service level values of each identified location (the claimed sum the average service level values of each identified location corresponds to Add point interference value to sector total and increment as shown in Fig. 4); sum the level of service for all locations throughout the service area(the claimed sum the level of service for all locations throughout the service area reads on Add sector interference

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value to system total and increment as indicated in Fig. 4); and divide the sum of the average service level values by the level of service throughout the service area to obtain a first value representing a measure of the quality of service for the service area (column 12, lines 59-65; Divide system total by N sectors to determine system interference value as shown in Fig. 4).

Regarding claim 18, Jensen teaches that the processor circuit (Fig. 4) is further programmed to obtain the ratio of the locations receiving degraded service to the total number of locations served by the service area to determine a second measure of the quality of service (column 11, lines 58-63).

### Conclusion

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander Boakye whose telephone number is ( 571) 272-3183. The examiner can normally be reached on M-F from 8:30am to 6:00pm.

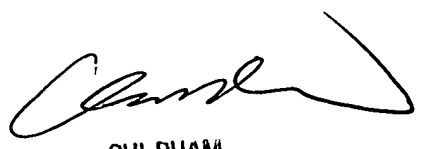
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi Pham, can be reached on (571) 272-3179. The fax number is (703) 872-9306. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is (703) 305-4750.

Alexander Boakye

Patent Examiner

AB

3/02/05

  
CHI PHAM  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2667

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